

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
STEVEN O. FONSECA and
KRISTEN L. FONSECA
fka Kristen L. Fuller
fka Kristen L. DeRose,
Debtors.

No. 7-09-10088 SL

MEMORANDUM OPINION AND ORDER DISMISSING CASE

This matter is before the Court on the Court's Order to Show Cause why case should not be dismissed for failure to comply with credit counseling requirements. Debtors appeared through their attorney Ken Egan. Debtors also filed a response brief, and the Court took the matter under advisement. Having reviewed the brief and the arguments of the Debtors, the Court finds that the case should be dismissed.

First, Section 109(h) is clear and unambiguous. An individual "may not be a debtor" unless he or she has received the required credit counseling. The statute does not allow the case to not be dismissed.

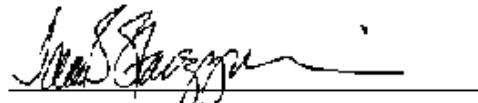
Second, this Court has repeatedly interpreted the statute in this fashion. See In re DeHooq, No. 13-08-12312-SF (Bankr. D. N.M. Sept. 17, 2008); In re Gurule, No. 07-12371-SA (Bankr. D. N.M. Oct. 31, 2007); In re Smith, No. 07-12269-SA (Bankr. D. N.M. Oct. 26, 2007). In these cases the Court dismissed the cases, without prejudice. Also, in these and other cases, the Court has required the attorney or petition preparer to refund the filing fee to the Debtor(s) and assist the Debtor(s) at no charge in

refiling the case (if the Debtor(s) choose to use the attorney again), including filing any stay motion that may be required pursuant to § 363(c)(3) or (4).

Therefore,

IT IS ORDERED that this case is dismissed for failure to comply with the prepetition credit counseling requirements.

IT IS FURTHER ORDERED that Mr. Egan refund the filing fee to the Debtors within two weeks of the entry of this Order and, if the Debtors so desire, assist them to refile at no charge, including determining whether a stay motion is required under § 363(c)(3) or (4).



Honorable James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: February 10, 2009

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